

# The Gazette of India

EXTRAORDINARY

PART II—Section 2

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## RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 23rd August, 1956:—

Bill No. XVII of 1956

*A Bill to amend and codify the law relating to adoptions and maintenance among Hindus.*

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:—

### CHAPTER I

#### PRELIMINARY

1. (1) This Act may be called the Hindu Adoptions and Maintenance Act, 1956. Short title and extent.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. (1) This Act applies—

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Application of Act.

*Explanation.*—The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:—

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and

(c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

(3) The expression "Hindu" in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

**Definitions.**

3. In this Act, unless the context otherwise requires,—

(a) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family:

Provided that the rule is certain and not unreasonable or opposed to public policy: and

Provided further that, in the case of a rule applicable only to a family, it has not been discontinued by the family;

(b) "maintenance" includes—

(i) in all cases, provision for food, clothing, residence, education and medical attendance and treatment;

(ii) in the case of an unmarried daughter, also the reasonable expenses of and incident to her marriage;

(c) "minor" means a person who has not completed his or her age of eighteen years.

4. Save as otherwise expressly provided in this Act,—

Overriding  
effect of  
Act.

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.

## CHAPTER II

### ADOPTION

5. (1) No adoption shall be made after the commencement of this Act by or to a Hindu except in accordance with the provisions contained in this Chapter, and any adoption made in contravention of the said provisions shall be void.

Adoptions  
to be  
regulated  
by this  
Chapter.

(2) An adoption which is void shall neither create any rights in the adoptive family in favour of any person which he or she could not have acquired except by reason of the adoption, nor destroy the rights of any person in the family of his or her birth.

6. No adoption shall be valid unless—

Requirements  
of a valid  
adoption.

(i) the person adopting has the capacity, and also the right, to take in adoption;

(ii) the person giving in adoption has the capacity to do so;

(iii) the person adopted is capable of being taken in adoption; and

(iv) the adoption is made in compliance with the other conditions mentioned in this Chapter.

7. Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption:

Capacity  
of a male  
Hindu to  
take in  
adoption.

Provided that if he has a wife living he shall not adopt except with the consent of his wife unless the wife is incapable of giving consent.

*Explanation I.*—If a person has more than one wife living at the time of adoption, the consent of all the wives is necessary, unless any one of them is incapable of giving consent.

*Explanation II.*—For the purposes of this section, a wife shall be deemed to be incapable of giving consent if she is of unsound mind or is a minor.

Capacity  
of a Hindu  
widow  
or spinster  
to take in  
adoption.

8. Any Hindu widow or spinster who is of sound mind and is not a minor has the capacity to take a son or daughter in adoption so long as she does not re-marry or remains unmarried, as the case may be.

Persons  
capable of  
giving in  
adoption.

9. (1) No person except the father or mother or the guardian of a child (whether a testamentary guardian or a guardian appointed or declared by a court) shall have the capacity to give the child in adoption.

(2) Subject to the provisions of sub-section (3), the father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised save with the consent of the mother where she is capable of giving consent.

(3) The mother may give the child in adoption—

(a) if the father is dead, or

(b) if he has completely and finally renounced the world,  
or

(c) if he has ceased to be a Hindu, or

(d) if he is incapable of giving consent.

(4) In the absence of the father or mother, the guardian of a child may give the child in adoption.

(5) The person giving a child in adoption must be of sound mind and must not be a minor.

*Explanation.*—For the purposes of this section—

(i) the expressions “father” and “mother” do not include an adoptive father and an adoptive mother; and

(ii) a father or mother shall be deemed to be incapable of giving consent if he or she, as the case may be, is of unsound mind or is a minor.

Persons  
who may  
be adopted.

10. No person shall be capable of being taken in adoption unless the following conditions are fulfilled, namely:—

(i) he or she is a Hindu;

(ii) he or she has not already been adopted;

(iii) he or she has not been married, unless there is a custom or usage applicable to the parties which permits persons who are married being taken in adoption;

(iv) he or she has not completed the age of fifteen years, unless there is a custom or usage applicable to the parties which permits persons who have completed the age of fifteen years being taken in adoption.

11. In every adoption, the following conditions must be complied with:—

Other conditions for a valid adoption.

(i) if the adoption is of a son, the adoptive father or mother by whom the adoption is made must not have a Hindu son (whether by legitimate blood relationship or by adoption) living at the time of adoption.

(ii) if the adoption is of a daughter, the adoptive father or mother by whom the adoption is made must not have any Hindu daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption.

(iii) the same child may not be adopted simultaneously by two or more persons.

(iv) the child to be adopted must be actually given and taken in adoption by the parents or guardian concerned or under their authority with intent to transfer the child from the family of its birth to the family of its adoption:

Provided that the performance of *datta homam* shall not be essential to the validity of an adoption.

12. An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family:

Effects of adoption.

Provided that—

(a) the child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth;

(b) any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property, including the obligation to maintain relatives in the family of his or her birth;

(c) the adopted child shall not divest any person of any estate which vested in him or her before the adoption.

Right of adoptive parents to dispose of their properties.

Determination of adoptive mother in certain cases.

13. Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer *inter vivos* or by will.

14. (1) Where a Hindu who has a wife living adopts a child, she shall be deemed to be the adoptive mother. .

(2) Where an adoption has been made with the consent of more than one wife, the seniormost in marriage among them shall be deemed to be the adoptive mother and the others to be step-mothers.

(3) Where a widower or a bachelor adopts a child, any wife whom he subsequently marries shall be deemed to be the step-mother of the adopted child.

(4) Where a widow or a spinster adopts a child, any husband whom she marries subsequently shall be deemed to be the step-father of the adopted child.

Valid adoption not to be cancelled.

15. No adoption which has been validly made can be cancelled by the adoptive father or mother or any other person, nor can the adopted child renounce his or her status as such and return to the family of his or her birth.

Presumption as to registered documents relating to adoptions.

16. Whenever any document registered under any law for the time being in force is produced before any court purporting to record an adoption made and is signed by the person giving and the person taking the child in adoption, the court shall presume that the adoption has been made in compliance with the provisions of this Act.

Prohibition of certain payments.

17. (1) No person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person, and no person shall make or give or agree to make or give to any other person any payment or reward the receipt of which is prohibited by this section.

(2) If any person contravenes the provisions of sub-section (1), he shall be punishable with imprisonment which may extend to six months, or with fine, or with both.

### CHAPTER III

#### MAINTENANCE

Maintenance of wife.

18. (1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

(2) A Hindu wife may claim maintenance from her husband only if and while she lives with him:

Provided that she shall be entitled to live separately from him without forfeiting her claim to maintenance,—

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he is suffering from venereal disease in a communicable form, the disease not having been contracted from her;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

19. (1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law. Maintenance of widowed daughter-in-law.

(2) The obligation of a father-in-law to maintain his widowed daughter-in-law under this section only extends in so far as he has the means to do so and the widowed daughter-in-law is unable to maintain herself out of her own earnings or other property or to obtain maintenance from her husband's estate or from her son, if any, or his estate; and any such obligation shall cease on her re-marriage.

20. (1) Subject to the provisions of this section a Hindu is bound, during his or her life-time, to maintain his or her legitimate or illegitimate children and his or her aged parents. Maintenance of children and aged parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor:

Provided that in the case of an unmarried daughter, whether a minor or not, she may claim maintenance so long as she lives with her father or mother and remains unmarried.

Dependants  
defined.

21. For the purposes of this Chapter "dependants" mean the following relatives of the deceased:—

- (i) his or her father;
- (ii) his or her mother;
- (iii) his widow, so long as she does not re-marry;

(iv) his or her son or the son of his predeceased son or the son of a predeceased son of his predeceased son, so long as he is a minor: provided and to the extent that he is unable to obtain maintenance, in the case of a grandson from his father's or mother's estate, and in the case of a great-grandson, from the estate of his father or mother or father's father or father's mother;

(v) his or her unmarried daughter, so long as she remains unmarried;

(vi) his widowed daughter, provided and to the extent that she is unable to obtain maintenance—

(a) from the estate of her husband, or

(b) from her son, if any, or his estate, or

(c) from her father-in-law or his father or the estate of either of them;

(vii) any widow of his son or of a son of his predeceased son, so long as she does not re-marry, provided and to the extent that she is unable to obtain maintenance from her husband's estate, or from her son, if any, or his estate; or in the case of a grandson's widow, also from her father-in-law's estate;

(viii) his or her minor illegitimate son, so long as he remains a minor;

(ix) his or her illegitimate daughter, so long as she remains unmarried.

Maintenance  
of depen-  
dants.

22. (1) Subject to the provisions of sub-section (2), the heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased.

(2) Where a dependant has not obtained, by testamentary or intestate succession, any share in the estate of a Hindu dying after the commencement of this Act, the dependants shall be entitled, subject to the provisions of this Act, to maintenance from those who take the estate.



(3) The liability of each of the persons who takes the estate shall be in proportion to the value of the share or part of the estate taken by him or her.

(4) Notwithstanding anything contained in sub-section (2) or sub-section (3), no person who is himself or herself a dependant shall be liable to contribute to the maintenance of others, if he or she has obtained a share or part the value of which is, or would, if the liability to contribute were enforced, become less than what would be awarded to him or her by way of maintenance under this Act.

23. (1) It shall be in the discretion of the court to determine whether any, and if so what, maintenance shall be awarded under the provisions of this Act, and in doing so the court shall have due regard to the considerations set out in sub-section (2) or sub-section (3), as the case may be, so far as they are applicable. Amount of maintenance.

(2) In determining the amount of maintenance, if any, to be awarded to a wife, children or aged parents under this Act, regard shall be had to—

- (a) the position and status of the parties;
- (b) the reasonable wants of the claimant;
- (c) if the claimant is living separately, whether the claimant is justified in doing so;
- (d) the value of the claimant's property and any income derived from such property, or from the claimant's own earnings or from any other source;
- (e) the number of persons entitled to maintenance under this Act.

(3) In determining the amount of maintenance, if any, to be awarded to a dependant under this Act, regard shall be had to—

- (a) the net value of the estate of the deceased after providing for the payment of his debts;
- (b) the provision, if any, made under a will of the deceased in respect of the dependant;
- (c) the degree of relationship between the two;
- (d) the reasonable wants of the dependant;
- (e) the past relations between the dependant and the deceased;

(f) the value of the property of the dependant and any income derived from such property; or from his or her earnings or from any other source;

(g) the number of dependants entitled to maintenance under this Act;

(h) in the case of a widow, her conduct.

Amount of maintenance may be altered on change of circumstances.

24. The amount of maintenance, whether fixed by a decree of court or by agreement, either before or after the commencement of this Act, may be altered subsequently if there is a material change in the circumstances justifying such alteration.

Debts to have priority.

25. Subject to the provisions contained in section 26 debts of every description contracted or payable by the deceased shall have priority over the claims of his dependants for maintenance under this Act.

Maintenance when to be a charge.

26. A dependant's claim for maintenance under this Act shall not be a charge on the estate of the deceased or any portion thereof, unless one has been created by the will of the deceased, by a decree of court, by agreement between the dependant and the owner of the estate or portion, or otherwise.

Effect on transfer of property on right to maintenance.

27. Where a dependant has a right to receive maintenance out of an estate and such estate or any part thereof is transferred, the right to receive maintenance may be enforced against the transferee if the transferee has notice of the right; or if the transfer is gratuitous; but not against the transferee for consideration and without notice of the right.

## CHAPTER IV

### REPEALS AND SAVINGS

Repeals.

28. The Hindu Married Women's Right to Separate Residence and Maintenance Act, 1946, and sub-section (2) of section 30 of the Hindu Succession Act, 1956, are hereby repealed. 19 of 1946.  
30 of 1956.

Savings.

29. Nothing contained in this Act shall affect any adoption made before the commencement of this Act, and the validity and effect of any such adoption shall be determined as if this Act had not been passed.

## STATEMENT OF OBJECTS AND REASONS

This part of the Hindu Code deals with the subject of adoptions and maintenance among Hindus.

2. With the passing of the Hindu Succession Act, 1956, which treats sons and daughters equally in the matter of succession, it has now become possible to simplify the law of adoption among Hindus. The Bill provides for the adoption of boys as well as girls. There is no longer any justification for allowing a husband to prevent his wife from taking a child in adoption after his death. The adoption made by a Hindu widow will hereafter be in her own right. No person need be divested of any property which has vested in him by reason only of the fact that subsequent to such vesting an adoption has been made. This rule of divesting has been the cause of many a ruinous litigation.

3. In the Hindu Succession Act, 1956, a specific provision was inserted whereby it was declared that the power of a Hindu to make a testamentary disposition of his property shall not affect the right of maintenance of any heir by reason only of the fact that under the testamentary disposition the heir has been deprived of a share in the property to which he would have been entitled if the deceased had died intestate. An assurance was then given that the Chapter of the Hindu Code relating to maintenance would be introduced in Parliament as soon as possible. The latter part of this Bill deals with maintenance. This Chapter does not call for any detailed comments. It is largely based on the existing law as codified in the Bills of the Rau Committee and the Select Committee of the Provisional Parliament in 1948.

H. V. PATASKAR.

NEW DELHI;

*The 21st August, 1956.*

S. N. Mukerjee,  
*Secretary.*

